MUI BANK BHD.
v.
GOLDEN HORNBILL HOTEL SDN. BHD.

HIGH COURT, KUCHING
DATUK CHONG SIEW FAI J.
[COMPANIES (WINDING-UP) NO. KG. 3 OF 1992/III]
23 NOVEMBER 1992

COMPANY LAW: Winding-up - Application to set aside winding-up order on the grounds that service of the petition was bad, ineffective and ought to be set aside - Service at registered office by leaving copy thereat - No evidence of absence of member, officer or servant - Rule 25(1) Companies (Winding-up) Rules 1972.

PRACTICE AND PROCEDURE: Service effected at registered office as shown by record kept at Registrar of Companies - Change of registered office - No notice of cancellation or change of registered office lodged with Registrar - Section 120(1) Companies Act 1965 - Whether service properly effected.

The respondent applied to set aside a winding-up order made against it at the instance of the petitioner on the grounds that the respondent was no longer at the office at which the petition had been served although the records kept by the Registrar of Companies showed that the registered address of the respondent was the address at which service was effected.

The respondent further contended that in leaving a copy of the petition at the registered office, the petitioner had failed to comply with the provisions of r. 25(1) Companies (Winding-up) Rules 1972, in that the process server had failed to indicate in the affidavit of service that at the time of leaving the petition at the respondents registered address, no member, officer or servant of the respondent could be found in the registered office.

Held:

[1] The respondent who changed its registered office without notifying the Registrar of Companies as required by s. 120(1) Companies Act 1965 could not rely upon the cancellation or change to defeat a service that was properly effected at its former registered office especially when the fact of the cancellation or change was not known to the petitioner at the time of the service.

[2] Service of process is an essential procedural step in properly constituted judicial proceedings. Rule 25(1) though directory in nature, ought to be properly and carefully adhered to.

[3] It must be clearly established by evidence in the affidavit of service or otherwise that at the time of leaving the copy of the petition at the respondents registered office, no member, officer or servant of the respondent could be found in the registered office. Such evidence is singularly lacking.

[Respondents motion to set aside the winding-up order allowed with no order as to costs.]

Cases referred to:

Ross v. Invergordon Distillers Ltd. [1961] SC 286 ***(foll)***

Summit Company (M) Sdn. Bhd. v. Nokko Products (M) Sdn. Bhd. [1985] 1 MLJ 68 ***(foll)***

Re Hatcham Motor Garage Co. [1916] 32 TLR 399 ***(foll)***

Legislation referred to:

Companies Act 1965 s. 120(1)
Companies (Winding-up) Rules 1972, r. 25(1)
Companies (Winding-up) Rules 1909, r. 28

For the respondent - Christina Eng; M/s. C.J. Eng
For the petitioner - John Lim; M/s. Tiong Lim Wong & Co.

JUDGMENT

Chong Siew Fai J:

By a Notice of Motion dated 5 November 1992 the applicant, Golden Hornbill Hotel Sdn. Bhd. (the Company) applies to set aside the winding-up order made against it on 25 September 1992 at the instance of the Mui Bank Berhad (the Petitioner).

The petitioner opposes the application.

The petition for the winding up of the company based on the ground of inability to pay its debt after demand, was taken out on 25 May 1992. The affidavit of service of one Suhairi bin Ujang shows that the petition was served by leaving a copy thereof at the registered office of the company. The relevant part of his affidavit affirmed on 27 July 1992 reads:

> (2) I did on Tuesday 21st day of July 1992 serve a true copy of the petition dated 22 May 1992 on Golden Hornbill Hotel Sdn. Bhd. by leaving a copy of the said petition at the registered address at Suite No. 2001, 20th Floor, Wisma Hamzah-Kwong Hing, No. 1, Leboh Ampang, 50100 Kuala Lumpur.

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The petition was heard on 25 September 1992 and the winding up order was made on the same day in the absence of any representative of the company.

The sole ground of the application, as contended for the applicant, is the service of the petition. It was submitted that the service was bad, ineffective and ought to be set aside.

The evidence adduced clearly establishes that at all material times, more particularly at the time of the service of the petition, the registered office of the company, as shown on the record kept by the Registry of Companies, was Suite 2001, 20th Floor Wisma Hamzah-Kwong Hing, No. 1, Leboh Ampang, 50100 Kuala Lumpur. Although in his affidavit affirmed on 31 October 1992, Sim Yong Pheng, a director of the company, stated that the registered office of the company was at the material time, "no longer there", there is no evidence that notice of the cancellation or change of the registered office of the company had been lodged with the Registrar of Companies as required under s. 120(1) of the Companies Act 1965. Indeed it was admitted that this was not done. In the circumstance it is not open to the company to rely on the event of the cancellation or change against the petitioner, particularly so when it is not shown that the petitioner had knowledge of the cancellation or change at the marerial time. In other words, a company that has changed its registered office without notifying the Registrar of Companies as required by s. 120(1) of the Companies Act 1965 cannot rely upon the cancellation or change to defeat a service that was properly effected at its former registered office, especially when the fact of the cancellation or change is not known to the petitioner at the time of the service. There is no change of the registered office until notice has been given, *Ross v. Invergordon Distillers Ltd.* [1961] SC 286; *Summit Company (M) Sdn. Bhd. v. Nokko Products (M) Sdn. Bhd.* [1985] 1 MLJ 68.

For the company it was submitted that the petitioner knew that the principal place of business of the company was at Kuching. This, even if true, would not, in my opinion, preclude the petitioner from employing an alternative equally authorised method of service at the registered office of the company provided service was duly and properly carried out in accordance with the rule.

Notwithstanding the above, the crucial question remains: Had service of the petition in this case complied with the relevant provisions in the Companies (Winding-up) Rules 1972? Rule 25(1) thereof reads:

> (1) Every petition shall, unless presented by the company, be served upon the company at the registered office of the company, and if there is no registered office, then at the principal or last known principal place of business of the company, if can be found, by leaving a copy with any member, officer, or servant of the company there, or in case no such member, officer or servant can be found there, then by leaving a copy at the registered office or principal place of business, or by serving it on such member or members of the company as the court may direct; ...
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> (Emphasis underlined)

Service of process is an essential procedural step in properly constituted judicial proceedings. Its object is to give notice to the party who will or may be affected by the Court's judgment or order, so that he may be aware of, and may, if he so wishes, to resist, that which is sought against him. The courts are always cautious to see that a defendant or respondent is fully apprised of the proceedings, if possible, before making any order against him. Rule 25(1), therefore, though directory in nature, ought to be properly and carefully adhered to.

In our instant case, the company had its registered office in Wisma Hamzah-Kwong Hing, No. 1, Leboh Ampang, Kuala Lumpur as is more particularly shown in the record kept by the Registry of Companies. Since the petitioner chose to effect service of the petition by leaving a copy thereof at the registered office, it must be clearly established by evidence in the affidavit of service or otherwise that at the time of leaving the copy at the company's registered office, no member, officer or servant of the company could be found in the registered office. Such evidence, however, is singularly lacking. The affidavit of Yeoh Hock Thong affirmed on 4 November 1992 said no more than that the address was occupied by another company and he gave no date of his inspection.

In *Re Hatcham Motor Garagge Co.* [1916] 32 TLR 399 the petition was served by leaving a copy thereof at the registered office of the debtor-company, the affidavit of service stated that no officer or servant was at the registered

office without stating that no member could be found there. On a construction of r. 28 of the Companies (Winding-up) Rules 1909 the relevant part of which is similar to our r. 25(1) quoted above, it was held that the affidavit was insufficient. In other words, in such a situation, the affidavit of service ought to state (if that is the fact) not merely that no officer or servant, but also that no member of the company could be found at the registered office.

In our instant case the affidavit of service made no mention at all about the absence of the company's personnel of the above three categories at the company's registered office. It may be that at the time of service none of them was there or that the server made no attempt to find out whether any of them was present. It would not be right for me to speculate. On the evidence available and for the above reasons, I am constrained to allow the motion. The winding-up order made on 25 September 1992 is set aside.

As regards costs, the company, in my view, is partly to blame for failing to take due and proper steps to effect the cancellation or change of its registered office as required by the Companies Act. In the exercise of the discretion of the court, I make no order as to costs.

PUBLIC PROSECUTOR

v.

ALCONTARA A/L AMBROSS ANTHONY

HIGH COURT, PENANG
TUAN VINCENT NG KIM KHOAY JC
[CRIMINAL TRIAL NO. 47(58)-39-88]
27 NOVEMBER 1992

DANGEROUS DRUGS: Charge of trafficking in cannabis - Whether plant material seized is cannabis - Section 2 Dangerous Drugs Act 1952 - Whether resin had been extracted from plant - Evidence of chemist that resin had not been substantially extracted - Whether the word substantially can be read into the defining section of the Act - Whether samples taken by the chemist for testing were homogeneous sample of the bulk of plant material seized.

The Accused was charged with trafficking in dangerous drugs, to wit, 70,952.1 gramme of cannabis contrary to s. 39B(1)(a) Dangerous Drugs Act 1952 (the Act). The Accused was arrested following a police ambush and the drugs were discovered in the boot of the car he was driving.

At the trial the chemist gave evidence that the exhibits seized from the Accused was found to be cannabis as defined by the Act and further stated that from the tests that he did he concluded that as there was resin present in substantial amount, the resin had not been extracted.

The question for the court was whether despite the fact that the exhibits were tested in 1987, that is, some years before the Supreme Court decision in *Loo Keck Leong v. PP* which decided that non-extraction of resin from any part of any plant of the genus cannabis is an essential ingredient of the change of trafficking in cannabis, the chemist had consciously and pointedly found that cannabis resin had not been extracted when his primary aim was to detect the cannabis resin, irrespective of the quantity detected, for the sole purpose of driving home the conclusion that the plant material was cannabis.

Defence Counsel also contended that the samples taken by the chemist for testing were not homogeneous samples of the bulk of the plant material seized.